



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/146535

PRELIMINARY RECITALS

Pursuant to a petition filed January 10, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 12, 2013, at Racine, Wisconsin.

The issues for determination are: 1) whether the agency properly seeks to recover an overpayment of FS benefits in the amount of \$1,096 for the period of August 1, 2012 – November 30, 2012; and 2) whether the agency properly determined the Petitioner's FS benefits effective December 1, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Virginia Chabrier

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On January 26, 2012, the Petitioner submitted an ACCESS application for FS benefits. She reported a household size of two. She also reported monthly rent of \$625.

3. On March 8, 2012, the agency issued a Notice of Decision informing the Petitioner that she was approved for \$367/month in FS benefits effective March 1, 2012. The agency notice indicated the rent that it had budgeted for the Petitioner was \$1,900/month. The only income budgeted was Supplemental Security Income of \$781.78/month.
4. On August 8, 2012, the Petitioner submitted a Six Month Report Form (SMRF) and reported rent of \$625/month. She also reported earned income from Walmart beginning July 10, 2012 and reported her hours as 40 – 60/biweekly at \$7.65/hour.
5. On September 4, 2012, the agency received 3 pay statements from the Petitioner for her employment at Walmart. The agency used the two most recent pay statements representing 30 days of pay to determine the Petitioner's monthly income of \$857.89.
6. On September 10, 2012, the agency issued a Notice of Decision informing the Petitioner that she was approved for \$367/month in FS benefits effective October 1, 2012. The agency budgeted earned income of \$399.02/biweekly (\$857.89/month), SSI income of \$781.78/month and rent of \$1,875/month.
7. On November 19, 2012, the agency issued a Notice of Decision to the Petitioner informing her that her monthly FS benefits would be reduced to \$93/month effective December 1, 2012. The only change the agency made in its benefit determination was to revise the Petitioner's rent expense to \$625/month.
8. On November 21, 2012, the agency issued a Notice of FS Overpayment and worksheets to the Petitioner informing her of the agency's intent to recover an overissuance of FS benefits in the amount of \$1,096 for the period of August 1, 2012 – November 30, 2012.
9. The state wage record, employer verification from Walmart and pay statements from the Petitioner indicate that the Petitioner received the following gross earned income: \$79.18 on July 19, 2012; \$425.26 on August 2, 2012; \$372.71 on August 16, 2012; \$493.20 on August 30, 2012; \$444.85 on September 13, 2012; \$344.33 on September 27, 2012; \$354.04 on October 11, 2012; \$180 on October 25, 2012; \$60.21 on November 8, 2012.
10. On January 10, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.
11. On January 14, 2013, the agency received an employment verification from Walmart indicating the Petitioner's last day of work was December 28, 2012.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non - client error"). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

When a household receives more FS than it was entitled to receive, it must be recovered by the agency. To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

In this case, the error was clearly that of the agency in budgeting \$1,900 and \$1,875/month for Petitioner's rent expense when Petitioner accurately reported her rent expense as \$625/month. Though the error occurred from March, 2012 until its discovery in November, 2012, the agency only seeks to recover an overissuance of benefits from August 1, 2012 because prior to that time, the client had no earned income and was entitled to the maximum amount of monthly benefits even though the rent was budgeted incorrectly. When the Petitioner obtained employment on July 10, 2012, the agency asserts that she was no longer entitled to \$367/month. The alleged overpayment occurred for 4 months prior to the discovery date, so the agency error recovery method is clearly appropriate under law.

The agency has presented a copy of the prior FS decision, and the FoodShare notice and worksheets demonstrating the computations of the overpayment at issue here. The agency calculated the overpayment based on monthly income of \$857.89 for the months of August, September, October and November, 2012. Based on the state wage record, the employment verification and the pay statements from the Petitioner, it is clear that the Petitioner's income was not \$857.89 in each of those months. Because the Petitioner's actual income is available to determine the overpayment, the agency must use that actual income.

With regard to the Petitioner's December 1, 2012 benefits, the agency made a change in the benefits based on its error in budgeting rent expense. At the time of the discovery of the agency error in November, the agency made a new determination of Petitioner's future benefits as well as a determination regarding the overpayment. In determining the overpayment, the agency should have reviewed the Petitioner's actual income and should have, at that time, based a determination of the Petitioner's December benefits based on the actual previous 30 days income. The FoodShare Manual requires the agency to act on any changes that become known to the agency even if the client has not reported the change. FoodShare Manual, § 6.1.1.2. In this case, the agency should have used the actual income figures available in determining the overpayment and therefore, the changes to the Petitioner's income would have been known to the agency in determining benefits.

Based on the evidence and testimony, the agency did not properly consider the Petitioner's actual monthly income in calculating the overpayment and in determining the Petitioner's December, 2012 benefits.

CONCLUSIONS OF LAW

1. The agency did not properly consider the Petitioner's actual monthly income in calculating an overpayment for the period of August 1, 2012 – November 30, 2012.
2. The agency did not properly consider the Petitioner's actual income in calculating benefits effective December 1, 2012.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to determine whether the Petitioner was overissued FS benefits for the period of August 1, 2012 – November 30, 2012 based on actual income as reflected in the pay statements and employer verification and based on actual rent expense of \$625/month. If the agency determines that the Petitioner was overissued FS benefits during that period, it shall issue a revised Notification of FS Overissuance and worksheets to the Petitioner. Petitioner shall have the right to file a new appeal of that determination. If the agency determines that

there was no overissuance of FS benefits during that period, it shall rescind overpayment Claim Number [REDACTED] against the Petitioner. This action shall be taken as soon as possible but no later than 10 days from the date of this decision.

IT IS FURTHER ORDERED that this matter is remanded to the agency to take all administrative steps necessary to determine the FS benefits to which the Petitioner was entitled effective December 1, 2012 based on actual income earned by the Petitioner in the previous 30 days. The agency shall issue a Notice of Decision to the Petitioner with the new determination and shall issue any additional FS benefits to which the Petitioner is entitled based on that determination. This action shall be taken as soon as possible but no later than 10 days from the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

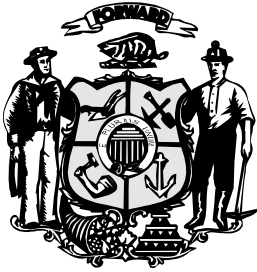
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of March, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 8, 2013.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability